

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3356 OF 2003

Shri Laxman Gajanan Palav & Ors. ... Petitioners
vs.
Nathpanthi Gosavi Samaj & Ors. ... Respondents

Mr. Sunil Dighe for the Petitioners.
Mr. N.V. Bandiwadekar for the Respondent No.1 and 2.
Mr. S.B. Kalel, AGP for the Respondent Nos.3 to 5/State.

Mr. Bhalchandra Dattaram Gosavi, Secretary, Nathpanthi Gosavi Samaj Aikyavardhak Mandal, Sindhudurg, present in Court.

Coram : **A.A. Sayed &
M.S. Karnik, JJ.**
Date : 07 July 2017

P.C. :

1 The Respondent No.2 is a recognized and fully aided Primary Ashram School run by the Respondent No.1 Management. The Respondent No.2 School has been sanctioned posts of 1 Head Master, 3 Teachers and 1 Superintendent.

2 After following due selection procedure the Respondent No.1 Management has appointed the Petitioner Nos.1 to 3 as Assistant Teachers and the Petitioner No.4 as Superintendent in the said sanctioned posts. The Petitioner No.1 belongs to Open Category and is appointed on 23 November 2000, the Petitioner No.2 belongs to OBC (Other Backward Class) Category and is appointed on 1 January 2001,

the Petitioner No.3 belongs to Open Category and is appointed on 23 November 2000. The Petitioner No.4 belongs to NT(B) Category and is appointed on 7 September 2000 in the solitary post of Superintendent and hence rules of reservation do not apply to said isolated post.

3 After the Petitioners were appointed, the Respondent No.1 Management submitted the proposals to the Respondent No.3 Special District Social Welfare Officer, Sindhudurg seeking approval to above appointments of the Petitioners. However, the Respondent No.3 Welfare Officer granted approval to said Petitioners on temporary basis for every academic year on the ground that the appointments are not made as per reservation policy.

4 By orders dated 31 March 2003 the Respondent No.1 Management terminated the temporary services of the Petitioners with effect from 2 May 2003. Being aggrieved by said orders of termination the Petitioners filed the aforesaid Writ Petition. By order dated 25 April 2003 the Division Bench issued notice to the Respondents and directed that in the meanwhile the services of the Petitioners will not be terminated. On 25 March 2004, Rule was issued, interim order was continued and thus the Petitioners continued in service.

5 The Petitioners are continuously working in their respective posts and are paid salary from the grant-in-aid released by the Respondent

No.3 Welfare Officer. The pay scale of the Petitioners has been revised pursuant to revision under the Vth and VIth Pay Commissions, but they have not paid the arrears of salary due to said revisions. At present, the Petitioners are receiving salary in the pay scale as revised under VIth Pay Commission.

6 According to the Petitioners, since the post of Superintendent in which the Petitioner No.4 is appointed, is an isolated post, reservation does not apply to said post and hence permanent approval is required to be granted to the Petitioner No.4 in the said post. It is contended that as there are three posts of Teachers sanctioned for the Respondent No.2 School, one post is for Reserved Category and two posts are for Open Category, hence, the Petitioner Nos.1 and 3 who belong to Open Category are required to be granted permanent approval as Assistant Teachers. According to the Petitioners, the Petitioner No.2 belongs to Other Backward Class (OBC) Category, which is also a Reserved Category and therefore, the Petitioner No.2 is also entitled to permanent approval and the same cannot be refused on the ground that the appointment of Scheduled Caste Category candidate shall have to be made.

7 Under the above circumstances, the Respondent No.1 Management shall submit to the Respondent No.3 Welfare Officer the

proposals of the Petitioners seeking approval to their appointments in their respective posts. Such proposals shall be submitted within four weeks from today. The Respondent Nos.3 to 5 shall take decision in the said proposals, in accordance with law, within a period of 12 weeks of its receipt from the Respondent No.1 Management, taking into consideration, the aforesaid facts, more particularly that the Petitioners are working since the year 2001.

8 Till the said proposals are decided by the Respondent Nos.3 to 5, they shall continue to release and pay salary grant in respect of the Petitioners. The services of the Petitioners shall be continued till the Respondent Nos.3 to 5 decide the proposals and for a further period of four weeks from the date of communication of this decision from the Respondent Nos.3 to 5, in the event of said decision being adverse to the Petitioners.

9 The statement of the learned Counsel for the Respondent Nos.1 and 2 on instructions of Mr. Bhalchandra Dattaram Gosavi, Secretary, Nathpanthi Gosavi Samaj Aikyavardhak Mandal, Sindhudurg, who is present in Court, states that in the event the staffing pattern is revised and/or additional post is sanctioned, the Respondent No.1 Management will adopt the reservation policy and appointment of a Scheduled Caste Category candidate shall be made.

10 Since the Petitioners are working for more than 17 years and in view of the statement given on behalf of the Respondent No.1 Management that they shall adopt the reservation policy and appointment of a candidate from Scheduled Caste Category shall be made as provided herein above, the proposals of the Petitioners shall be considered sympathetically.

11 The Petition is disposed of accordingly. Rule to stand discharged.

(M.S. Karnik, J.)

(A.A. Sayed, J.)